

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
October 13, 2009 Session

**JOHNNY CARTER ET AL. v. MELISSA HEMMEN ET AL.**

**Appeal from the Chancery Court for Lawrence County**  
**No. 13570-07      Robert L. Jones, Judge**

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**No. M2008-02727-COA-R3-CV - Filed February 19, 2010**

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Plaintiffs filed this action against the owners of the adjacent property to quiet title to a strip of land along the boundary of their property. The trial court awarded a portion of the disputed property to the plaintiffs and a portion of the property to the defendants. The defendants appeal. Finding the evidence preponderates in favor of the trial court's ruling, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Stacie Odeneal, Loretto, Tennessee, for the appellants, Melissa Hemmen and Joe Hemmen.

Randy Hillhouse, Lawrenceburg, Tennessee, for the appellees, Johnny J. Carter and Janie L. Carter.

**OPINION**

The property at issue on appeal is on the north boundary of the plaintiffs' 63-acre tract and on the south and southwest boundaries of the defendants' 21-acre tract. The underlying action to quiet title also pertained to an adjoining segment of land on the south boundary of the defendants' 50-acre tract that adjoins their 21-acre tract;<sup>1</sup> however, that section of the disputed property is not at issue in this appeal.

Plaintiff Johnny Carter inherited an undivided interest in a 63-acre tract, along with his brothers and sisters, Virginia Carter Canerday, Maxie L. Carter, Thomas L. Carter, and Mary Jo Carter Allen, from their father Jack Carter. Thereafter, Johnny Carter and his wife,

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<sup>1</sup>The defendants' 50-acre tract lies along the east boundary of the defendants' 21-acre tract.

Janie Carter, acquired sole ownership to the 63-acre tract from Johnny's brothers and sisters pursuant to a warranty deed recorded on February 6, 1992.

Defendant Melissa Hemmen acquired two tracts of property from her father, Thomas Carter, in 2002.<sup>2</sup> He deeded a 50-acre tract to her on February 6, 2002, by warranty deed. Eight months later, he deeded the adjacent 21-acre tract to her by quit-claim deed.<sup>3</sup>

Thereafter, a dispute arose concerning a 7.5-acre strip of property that adjoined the litigants' properties. The disputed property was on the northern border of the plaintiffs' property and the southern border of the defendants' property. A portion of the disputed property was adjacent to the Hemmens' 50-acre tract, and a portion was adjacent to their 21-acre tract. In an effort to resolve the dispute, the Hemmens hired a licensed surveyor, David Parsons,<sup>4</sup> to survey their property. The Carters also hired Mr. Parsons to survey their property.

Mr. Parsons examined the deeds of record in the Register's Office, and he reviewed the tax maps of the Assessor of Property. Mr. Parsons determined that the deed to the Hemmens' 50-acre tract provided for "a very evident northwest corner," and after researching the tax maps and tracing the deeds, he went to the property and marked the lines of this tract on the ground. The legal description to the Hemmens' 50-acre tract read as follows:

Range 6, Section One on the waters of Wolf Creek and beginning at the N.E. corner of Entry in the name of Wade & Blaringhamers; thence North 90 poles to a stake; thence West 89 poles a chestnut tree; thence South 90 poles to a stake; thence East 89 poles to the beginning, and containing **50 Acres**, more or less.

Being the same property conveyed to Phillip D. Springer, Sr. and wife, Augusta Carter Springer, by Warranty Deed dated July 19, 1978 and recorded in Deed Book 193, pages 561/62, Register's Office, Lawrence County, Tennessee.

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<sup>2</sup>Melissa Hemmen is a niece of Plaintiff Johnny Carter. Her father, Thomas Carter, and Johnny Carter are brothers.

<sup>3</sup>This deed was recorded on October 3, 2002.

<sup>4</sup>David Parsons, a Tennessee-licensed surveyor since 1994, resides in Lawrence County, Tennessee. According to Mr. Parsons, he had worked in surveying since 1981 and had been surveying in Tennessee since April 1991.

As for the Hemmens' 21-acre tract, Mr. Parsons found no history prior to the 2002 Quit-Claim Deed. It was subsequently discovered that this deed had been created by Thomas Carter just prior to giving the 21 acres to his daughter, Melissa Hemmens.<sup>5</sup> Furthermore, Mr. Parsons noted that the deed to the 21-acre tract did not contain distances or directions; instead, it used neighboring deeds as the boundaries.<sup>6</sup>

Mr. Parsons also surveyed the Carters' property, reviewed the 1992 Warranty Deed, and walked the property. He determined that the Carters' 63-acre tract had good physical evidence of the lines on the ground; however, Mr. Parsons also determined that the legal description did not meet legal standards. Mr. Parsons also learned that Thomas Carter and Johnny Carter assisted a Lawrence County Realtor, Skeets Eskridge, to come up with a description of the property the Carter siblings inherited from their father, being the same 63 acres Johnny and Janie Carter subsequently purchased from Johnny's siblings. The legal description crafted by Thomas Carter, Johnny Carter, and Skeets Eskridge was included in the 1992 Warranty Deed to the Carters' 63-acre tract that was signed by all the Carter siblings; it read as follows:

Situated, lying and being in the 1st District of said County and State on the waters of Wolf Creek, BEGINNING at an iron pin in the center of Carter Road; thence in a southeastwardly direction and the center and meanders of Carter Road 48½ poles, more or less to an iron pin, a corner in Springer's NBL; thence East 42½ poles to a black oak with pointers; thence South 16½ poles to a stake with white oak and poplar pointers; thence East 66 poles to a stake with small pointers and oak tree; thence South with Springer's EBL 72½ poles to the center of Wolf Creek; thence East with the center and meanders

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<sup>5</sup>Thomas Carter testified that he got the description for the 21-acre tract after he discovered that no one had a deed for it and acknowledged on cross-examination that he created the 21-acre description as there was not any prior deed for this tract.

<sup>6</sup>The quit-claim deed to the Hemmens' 21-acre tract, typed in bold, read as follows:

**BEGINNING ON A CROSS TIE AND IRON PIN AT THE SOUTHEAST CORNER OF JAMES READ PROPERTY THENCE WEST WITH JAMES REED AND ROY KIMBRELL'S SOUTH LINE 42 POLES AND 10 FEET TO A CROSS TIE AND IRON PIN CORNER THENCE SOUTHWESTERLY 70 POLES WITH A WIRE FENCE AND JIMMY CARTER'S EAST BOUNDARY LINE TO A HICKORY AND IRON PIN CORNER. THEN SOUTHEASTERLY 14 POLES AND 13 FEET TO A MAPLE TREE AND IRON PIN. THEN SOUTH 10 POLES WITH JACKIE CARTER'S EAST LINE TO IRON PIN CORNER THENCE EAST WITH JACKIE CARTER'S NORTH LINE 27 POLES TO IRON PIN CORNER THENCE NORTH 90 POLES WITH MELISSA AND JOE HEMMEN'S WEST LINE TO THE BEGINNING.**

of Wolf Creek 39¼ poles to a point of Carter land; thence North with Carter's WBL 103 poles to a corner, a cross tie fence post; thence East with Carter's NBL 40½ poles to a corner and iron pin; thence North with Killen's WBL 24¼ poles to a corner, an iron pin, Springer's SEC; thence West with Springer's SBL, passing Springer's SWC at 89 poles and in all 116 poles to a stump with black gum and dogwood pointers; thence North 10 poles to a stake with hickory pointers, Holtsford's SEC; thence West 59⅓ poles, more or less, to an iron pin in the center of Carter Road to the beginning, this being all of the land lying east of Carter Road belonging to the Jack Carter heirs.

Mr. Parsons concluded that the Hemmens' warranty deed to the 50-acre tract, which was traceable back to an 1852 deed, was the "best" deed. Nevertheless, based on the information gathered from the deeds and tax maps, Mr. Parsons concluded there was a discrepancy of 7.516 acres on the southern section of the Hemmens' property and the northern section of the Carters' property that could not be resolved by comparing the deeds.

Mr. Parsons' survey and his comparison of the deeds did not resolve the dispute between the Carters and Hemmens. As a result, the Carters filed suit against the Hemmens to quiet title to the property. In their Answer, the Hemmens asserted the affirmative defenses of equitable estoppel, claiming the Carters and their predecessors in title had acquiesced to the boundary line, and the doctrine of laches, contending the Carters' claim was barred because the Carters had full knowledge of the facts giving rise to the complaint since 1992, which was the year they purchased the property.

A trial was held in the Chancery Court of Lawrence County on November 6, 2008. Mr. Parsons testified regarding his survey of the Hemmens' property and his findings regarding the various deeds. Other witnesses testified regarding the use of the disputed property. According to Johnny Carter, he and his son, Brent Carter, had raised hogs on a part of the disputed property for a number of years. He also testified that he had possessed and used the property since he and his wife purchased the property in 1992. Brent Carter testified confirming the fact that he and his father had raised hogs on the disputed property. Maxie Carter, a brother of Johnny and Thomas Carter, testified that he went to the property with Brent Carter and recognized the boundary line as being that indicated by the deed to the Carters' 63-acre tract; however, he also testified that he had not used or visited the property in over twenty years. Jimmy Burks, the husband of the late Phyllis Springer Burks, testified that his in-laws had owned property in the general vicinity of the Hemmens' 21-acre tract; however, he stated that the property never crossed McKinney Road on the east side of the tract.

Having considered the evidence, the trial court awarded a portion of the disputed property to the Hemmens and a portion to the Carters. The court awarded the Hemmens the portion of the disputed property that adjoined their 50-acre tract; the court awarded the Carters the portion of the disputed property that adjoined the Hemmens' 21-acre tract.

The Hemmens appealed. They contend the predecessors to the Carters who carved out the 63-acre tract intended that the northern boundary of the 63-acre tract be "near-straight." The Hemmens also contend that a triangular section of the disputed property that is located at the southwest corner of the Hemmens' 21-acre tract, should not have been awarded to the Carters given that there was no showing of abandonment or adverse possession by either party or subsequent claim by perfect title.

### ANALYSIS

#### A.

"In resolving a boundary line dispute, it is the role of the trier of fact to evaluate all the evidence and assess the credibility of the witnesses." *Mix v. Miller*, 27 S.W.3d 508, 514 (Tenn. Ct. App. 1999) (citing *Norman v. Hoyt*, 667 S.W.2d 88, 91 (Tenn. Ct. App. 1983)). "When determining a boundary line that is in dispute, the court must look first to the natural objects or landmarks on the property, then to the artificial objects or landmarks on the property, then to the boundary lines of adjacent pieces of property, and finally to courses and distances contained in documents relevant to the disputed property." *Id.* at 513 (citations omitted).

The appellate court conducts a *de novo* review of the trial court's decision in a boundary dispute with a presumption of correctness as to the trial court's findings of fact, unless the evidence preponderates against those findings. *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). Where the trial court does not make findings of fact, there is no presumption of correctness and we "must conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999). We also give great weight to a trial court's determinations of credibility of witnesses. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000). Issues of law are reviewed *de novo* with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999). Mixed

questions of law and fact are subject to a different standard of review. *Bubis v. Blackman*, 435 S.W.2d 492, 498 (Tenn. Ct. App. 1968).

A presumption of correctness does not attach to mixed questions of fact and law. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995) (citing *Murdock Acceptance Corp. v. Jones*, 362 S.W.2d 266, 268 (Tenn. Ct. App. 1961)). Although a presumption of correctness attaches to the trial court's findings of fact, we are not bound by the trial court's determination as to the legal effect of its factual findings, nor by its determination of a mixed question of law and fact. *Travelers Insurance Co. v. Evans*, 425 S.W.2d 611, 616 (Tenn. 1968); *Sullivan v. Green*, 331 S.W.2d 686, 692-93 (Tenn. 1959). Our standard of review of rulings on mixed questions of fact and law is *de novo* with a presumption of correctness extended only to the trial court's findings of fact. *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292,305 (Tenn. 2005) (citing *Carpenter v. State*, 126 S.W.3d 879, 886 (Tenn. 2004)).

#### B.

The trial court correctly determined that the portion of the disputed property that forms the south boundary of the Hemmens' 50-acre tract belonged to the Hemmens, a decision neither party disputes. What is at issue is whether the trial court erred by awarding the Carters the portion of disputed property that adjoined the Hemmens' 21-acre tract. There are two sections of this property that are in dispute: the southern boundary of the 21-acre tract and a triangular section along the southwest corner of the 21-acre tract. We will deal with these issues in turn.

#### The Southern Boundary Line

The Hemmens claim that the southern boundary of their two tracts should be a straight line, which would be the case if they were awarded all of the disputed property. To support this contention, the Hemmens claim it was the intent of those who created the deed to the Carters' 63-acre tract in 1992 for there to be a near-straight northern boundary line. See *Gernt v. Floyd*, 174 S.W. 267, 267-68 (Tenn. 1915) (holding that the trial court may look to the intent of the parties who created the deed if there is uncertainty). This appears to be logical; however, the problem with this contention is there is no evidence to support it. It is merely a contention.

The deed to the Hemmens' 21-acre tract provides no assistance because it merely reflects that it is bounded by the adjoining properties. Thus, we are left with the conclusion reached by Mr. Parsons, which is that the legal descriptions leave us with a discrepancy, a gap, one the court must resolve. To resolve this discrepancy, the trial court looked to the testimony of the witnesses. The majority of witnesses who could recall relevant facts testified

favorably to the Carters on this issue, and the Hemmens provided no testimony to contradict this testimony.

#### The Triangle at the Southwest Corner

The Hemmens also contend that the trial court erred in awarding the Carters a triangular section located at the southwest corner of the Hemmens' 21-acre tract because there was no showing of abandonment or adverse possession by either party; however, we find no evidence to support this contention. Mr. Parsons concluded, based on the Carters' 1992 Warranty Deed and the Hemmens' 2002 Quit-Claim Deed, that neither party had clear title to the property. Given the fact the 2002 Quit-Claim deed to the 21-acre tract had "no history," as David Parsons testified, and no witnesses testified that the disputed property was part of the 21-acre tract, the evidence does not preponderate against the trial court's finding that this portion of disputed property also belongs to the Carters as part of their 63-acre tract of land.

#### **IN CONCLUSION**

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Appellants Melissa and Joe Hemmen.

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FRANK G. CLEMENT, JR., JUDGE